<u>**REMARKS/ARGUMENTS**</u>

Claims 1-21 are pending and rejected in this application. Claims 8-21 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Claims 1-21 stand rejected as obvious under 35 U.S.C. § 103(a). Applicants respectfully traverse these rejections and request reconsideration and allowance in view of the foregoing amendments and the following remarks.

<u>**Rejections Under 35 USC § 101**</u>

Claims 8-14 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Applicants respectfully disagree. The Office Action indicates that "the claimed 'load balancer' is not a machine, an article of manufacture, a composition of matter, or a process and thus cannot be patented." *See* Office Action dated May 24, 2011 at page 5. This interpretation misinterprets the claimed subject matter and further fails to articulate any argument as to why the rejected claim falls outside the four enumerated categories of patentable subject matter or that it is directed to one of the excluded categories. To support a rejection that the claimed subject matter is non-statutory under 35 U.S.C. § 101, the Examiner must show that the claimed subject matter is not directed to a process, machine, manufacture or composition of matter or that the claim is directed to nothing more than an abstract idea, natural phenomena, or law of nature. *See* MPEP §2106(IV). Nothing in the Office Action indicates why the claimed subject matter is not considered a machine or manufacture, or indicates that the subject matter is in any way directed to an abstract idea. Therefore, the Office Action fails to set forth a *prima facie* case of unpatentability under 35 U.S.C. § 101.

Furthermore, claim 1 is directed to "a load balancer." As clearly set forth in claim 8 and as further described by Figure 1 and the accompanying description of Figure 1 describing the load balancer 30 at ¶¶011-012 in the specification, a load balancer is an apparatus that includes a processor and a memory and therefore is clearly directed to a machine or manufacture. Applicants submit that claiming 'a processor' and 'a memory' clearly indicates utilization of hardware elements and is therefore directed to statutory machine or manufacture. Claim 8, taken as a whole, is read as acting upon and utilizing hardware elements, and as such, is recited in conjunction with a physical structure such as a processor. The subject matter is therefore claimed as part of a statutory machine or manufacture.

Claims 15-21 are additionally rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Claims 15-21 pertain to 'a computer-readable medium having stored thereon computer-executable instructions'. Claim 15 has been amended as suggested by the Examiner to recite 'a non-transitory computer readable medium.' Applicants note that as presently amended, a *non-transitory* computer readable medium comprises all computer readable medium, with the sole exception being a transitory, propagating signal.

Accordingly, Applicants respectfully submit that claims 8-21 are patentable under 35 U.S.C. § 101 and request reconsideration and withdrawal of these rejections.

Rejections Under 35 USC § 103

Claims 1-21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,128,279 to O'Neil et al., (hereinafter "O'Neil"), in view of U.S. Patent No. 6,748,448 to Barrera et al., (hereinafter "Barrera"), and further in view of U.S. Patent No. 7,543,066 to Colasurdo. Claims 1-21 are alternatively rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Neil, in view of U.S. Patent No. 6,954,783 to Bodwell et al., (hereinafter "Bodwell") and further in view of Colasurdo. Applicants respectfully disagree.

Claim 1 as amended recites in part:

> A method of accessing data from a plurality of servers comprising:
>
> modifying the data by adding an identity of the first server to a portion of the data that would be used to initiate a subsequent request from the client computer;
>
> forwarding the modified data to the client computer wherein subsequent requests received from the client computer include said first server identity;

The amendment as indicated above is supported at least by paragraphs [013]-[019] of the specification. No new matter has been added. Applicants submit that the cited references do not teach, suggest or describe the identified subject matter.

Applicants agree with the Examiner's assessment that O'Neil does not describe at least adding an identity of the first server to the data. *See* Office Action at page 7 and Decision on Appeal at page 5. Applicants additionally agree that neither Barerra nor Bodwell disclose at

least the limitation 'wherein subsequent requests received from the client include the first server identity and sending each of the subsequent requests to the first server' as claimed. *See* Office Action at pages 9 and 14. However, Applicants submit that neither Barrera nor Bodwell disclose the 'modifying' and 'adding' limitation of claim 1.

Claim 1 Defines Over the Combination Including Barrera

Barrera discloses using a URL addressing scheme for efficiently accessing resource files on a networked server system. *See* Barrera, column 4, lines 10-25. Barrera discloses a sequence of steps, in which a URL address is *sent* as part of an instruction request *to the host server* to initiate the locating of the requested file. Barrera does not disclose at least using a URL address as part of a retrieval process to be sent to the *requesting* party but rather describes *a client browser sending a request* with a URL link. The request is passed on *to the server as part of the request*. *See* Barrera, column 8, lines 40-62.

Thus Barrera is directed to sending data from a client computer to a server. Nothing in Barrera discloses modifying the requested data and forwarding the modified data to the requestor as described in the rejected claims of the present application. Accordingly, Applicants submit that Barrera fails to suggest or disclose at least the 'modifying' and 'adding' limitation of the rejected claims.

Claim 1 Defines Over the Combination Including Bodwell

Bodwell describes utilizing a software program of an intermediate server to forward user requests for a target web server through an intermediate server. The software program, and therefore the intermediate server, thereafter redirect to client requests of the web page to the target web server. 'Adding the identity of a first server to the data' and 'forwarding the modified data to the client computer' as claimed is not the same as adding the identity of an unrelated intermediate server to information transmitted to the target server as recited in Bodwell. In the cited example, the software program embeds the name of the target server, but does not forward the requested file including the identity of a server *to a client computer* as described in claim 1. The embedding (of the target server's name and the special identifier) described in Bodwell is directed to communication between an intermediate server and a target

server to achieve the end of routing all future requests of the relevant target server through the relevant intermediate server. It fails to describe at least modifying the data by adding an identity of a server to data and forwarding the modified date to a client computer wherein subsequent requests received from the client computer include said first server identity and sending each of said subsequent requests to said first server altogether. Accordingly, Applicants submit that Bodwell fails to suggest or disclose the identified limitations of the rejected claims.

Claim 1 Defines Over the Combination Including Colasurdo

The Office Action identifies Colasurdo as allegedly remedying the deficiencies of the combination of O'Neil, Barerra, and Bodwell. The cited portions of Colasurdo recite in part:

> When a server creates a session, it assigns a unique session ID value that is sent back top [sic] the client machine under the name jsessionid. Thereafter, *the client machine will include the session Id in all requests issued to that server farm.* The session ID might be sent in a cookie that forms part of the request. Alternately, it might be appended to the URI of the request in a mechanism known as URL rewriting.

Thus Colasurdo discloses a session ID that is transmitted by the client machine as part of the request wherein the session ID defines a set of related requests, not the first server that processes the request. This is not the same as modifying the requested data by adding an identity of the first server to a portion of the data that would be used to initiate a subsequent request from the client computer and forwarding the modified data to the client computer as claimed in the present application.

Conclusion

In order to support a proper § 103(a) rejection, the cited references must include a similar teaching, suggestion or description of every element of the rejected claims. For at least the above reasons, Applicants maintain neither the combination of O'Neil, Barrera, and Colasurdo nor the combination of O'Neil, Bodwell, and Colasurdo disclose every limitation of claim 1. Therefore Applicants respectfully submit that the § 103(a) rejections are lacking and should be withdrawn. Likewise, independent claims 8 and 15 include similar limitations and are allowable over the cited references for at least the same reasons. Claims 2-7, 9-14, and 16-

21 depend from and further define allowable independent claims 1, 8, and 15 respectively, and therefore are allowable as well.

For at least the above reasons, it is believed that this Response places the application in condition for allowance, and early favorable consideration of this Response is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the telephone number listed below.

The Office is hereby authorized to charge any additional fees, or credit any overpayments, to Deposit Account No. **11-0600**.

Respectfully submitted,

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